STATE OF MICHIGAN

COURT OF APPEALS

AMERICAN STATES INSURANCE COMPANY and MARK RATCLIFF, d/b/a MARK RATCLIFF CONSTRUCTION COMPANY,	UNPUBLISHED May 28, 2009
Plaintiffs-Appellees,	
v	No. 279022 Wayne Circuit Court
RICK HAMPTON, d/b/a VIP TRUCK & TRAILER REPAIR, and MIKE FORBES,	LC No. 05-522975-NZ
Defendants-Appellants.	ON REMAND

Before: Meter, P.J., and Talbot and Murray, JJ.

PER CURIAM.

This case is on remand from our Supreme Court. The issue that we have been directed to consider is whether the trial court erred in denying defendants' motion for a directed verdict with respect to Mark Ratcliff's claim for damages.[1] We affirm the trial court's denial of that motion.

The salient background facts are set forth in this Court's prior opinion, *American States Ins Co v Hampton*, unpublished opinion per curiam of the Court of Appeals, issued October 28, 2008 (Docket No. 279022). Underlying the instant appeal is the trial court's denial of defendants' motion for directed verdict at the bench trial on damages. In denying the motion, the court rejected defendants' claim that plaintiff Mark Ratcliff's procurement of the insurance policy demonstrated the parties' intent that Ratcliff bore the risk that the policy limit was insufficient to cover the loss, and that defendants could not be held liable where they had no control over the amount of insurance obtained and Ratcliff admitted that the building was underinsured. Instead, the court ruled that because defendant Rick Hampton and his business caused the fire, paragraph 4 of the lease agreement was controlling.[2]

[1] Specifically, in their application to the Supreme Court, defendants argued that this Court had previously ignored their argument that "the trial court erred in denying defendant-appellants' motion for directed verdict as to the damages incurred by Ratcliff, individually."

[2] Paragraph 4 of the lease agreement provides: "Lessee shall be responsible for damages caused (continued…)

Defendants argue that where the lease agreement was silent with respect to which party was responsible for procuring insurance and did not require Hampton to obtain excess coverage or bear the risk of Ratcliff's failure to obtain excess coverage, the court erred in denying their directed verdict motion.[3] We disagree.

This Court reviews de novo the trial court's denial of a motion for a directed verdict. *Cacevic v Simplimatic Engineering Co* (*On Remand*), 248 Mich App 670, 679; 645 NW2d 287 (2001). In reviewing the trial court's decision, this Court reviews

> the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, granting that party every reasonable inference, and resolving any conflict in the evidence in that party's favor to decide whether a question of fact existed. A directed verdict is appropriately granted only when no factual questions exist on which reasonable jurors could differ. If reasonable jurors could reach conclusions different than this Court, then this Court's judgment should not be substituted for the judgment of the jury. [*Id*. at 679-680 (internal citations omitted).]

In making their argument, defendants principally rely upon *Reliance Ins Co v East-Lind Heat Treat, Inc*, 175 Mich App 452; 438 NW2d 648 (1989), in which this Court considered whether a tenant bore the risk that the insurance policy would sufficiently cover the leased premises against fire damage. In that case, the landlord and tenant entered into a commercial lease agreement requiring the tenant to pay the landlord for the fire insurance premium on the leased premises. *Id*. at 454. After a fire damaged the premises, the insurer, Reliance, paid the landlord for fire damage and brought a subrogation action against the tenant for negligence to recover proceeds it paid to the landlord. *Id*. The landlord subsequently joined the suit seeking damages for its uninsured loss. *Id*. The trial court granted summary disposition in favor of the tenant. *Id*. at 453.

On appeal, this Court initially noted that because the tenant did not expressly agree to keep the premises fully insured against fire damage, the dispositive question was whether the parties intended the landlord or tenant to bear the risk that the policy limit would sufficiently cover the premises. *Id*. at 457-458. In concluding the tenant did not bear this risk, we explained:

> In view of the absence of language assigning this risk to either party, the absence of language limiting the tenant's obligation to pay premiums to any amount and the fact that the landlord obtained the policy, we find that the clear intent of the parties was that the landlord was to bear the risk that the policy limit would be insufficient to cover total loss. The tenant's only duty under the terms of the lease was to pay fire insurance premiums. The tenant had no duty to determine whether the landlord obtained sufficient insurance to fully protect its property

(…continued)

by his negligence and that of his family or invitees and guests."

[3] Although defendants moved for directed verdict on both Ratcliff's individual claims and American States's subrogation claim, no argument is made on appeal with respect to the subrogation claim.

> against fire damage. Under the lease the landlord had the right to secure adequate coverage and bill the tenant for the full amount of the premium. The failure of the landlord to do so may not be blamed on the tenant. [*Id*. at 458.]

Initially, it would appear that *Reliance* is applicable. Indeed, not only did Ratcliff admit that he was aware that his insurance coverage was insufficient to repair the building, but also the lease agreement did not require Hampton to pay Ratcliff for fire insurance (or to obtain any insurance) as the lease agreement required the tenant in *Reliance*. Thus, at first blush, the reasoning in *Reliance* seems to cut in favor of the inference that the parties intended Ratcliff to bear the risk of obtaining sufficient insurance coverage to fully protect his property because Hampton had even less responsibility with respect to obtaining insurance than did the tenant in *Reliance*.

However, this conclusion ignores the key difference between this case and *Reliance*–namely, that the parties in this case expressly agreed in contract that Hampton would be liable for damages caused by his negligence. There is no provision for negligence is *Reliance*. Given this, as we concluded in our prior opinion, *Laurel Woods Apartments v Roumayah*, 274 Mich App 631; 734 NW2d 217 (2007), is directly on point and is controlling here. Indeed, *Laurel Woods* not only held that the tenants were liable under the lease agreement for any damage caused to the premises by their acts or omissions, but the Court also rejected the argument that the lease agreement's failure to require the tenant to insure the premises precluded the landlord's recovery. *Id*. at 636-640. Consequently, as it is undisputed that Hampton's employee accidentally caused the fire and the lease agreement provides that Hampton is liable for damage caused by his negligence, the trial court was correct to deny defendants' motion for a directed verdict despite Ratcliff's admission that he was aware the insurance coverage was insufficient.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Christopher M. Murray